

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of a Complaint Regarding the
Annexation of a Portion of the Service
Territory of Peoples Cooperative Power
Association by the City of Rochester

ISSUE DATE: August 8, 1988

DOCKET NO. E-132/SA-88-270

ORDER DENYING RECONSIDERATION

PROCEDURAL HISTORY

On June 27, 1988, the Minnesota Public Utilities Commission (the Commission) issued its ORDER AUTHORIZING THE PROVISION OF ELECTRIC SERVICE DURING PROCEEDING and NOTICE AND ORDER FOR HEARING in this matter. For the pendency of this proceeding, the Commission authorized the City of Rochester's (City) municipal utility, Rochester Public Utilities, to provide electric service to new customers in the North Park First and Second Subdivisions and authorized Peoples Cooperative Power Association (Peoples) to provide electric service to its existing customers in those subdivisions. The Commission referred the issued of compensation from the City to Peoples to the Office of Administrative Hearings for a contested case hearing.

On July 19, 1988, Peoples filed a PETITION FOR RECONSIDERATION AND VACATION OF ORDER AUTHORIZING THE PROVISION OF ELECTRIC SERVICE DURING PROCEEDING AND PETITION FOR AMENDMENT OF NOTICE AND ORDER FOR HEARING. Peoples asked that the Commission vacate its Order authorizing the provision of electric service during this proceeding and set the matter of interim provision of services for hearing by amending the Commissions's Notice and Order for Hearing to include the interim service issue in the hearing before the Office of Administrative Hearings. In addition, Peoples asked that the Commission reconsider its refusal to refer the issue of the City's actions in annexing Peoples' service territory to the Attorney General for appropriate action under Minn. Stat. Secs. 216B.54, 216B.57, 216B.59, 216B.60 and 216B.61.

On July 22, 1988, the City filed its REPLY OF CITY OF ROCHESTER TO PETITION FOR RECONSIDERATION AND VACATION OF ORDER requesting that the Commission deny Peoples' request.

No other party filed written comments on Peoples' petition.

FINDINGS AND CONCLUSIONS

The Commission must decide whether to reconsider and vacate its interim service decision in this matter.

In its June 27, 1988 Order, the Commission found that the material facts regarding the issue of the provision of interim service are not in dispute. The Commission had given the parties an oral argument-type hearing and found that adequate to decide the issue of the provision of interim

service. The Commission concluded that a contested case hearing on this issue was not necessary.

The Commission affirms its interim service decision. The Commission finds that Peoples has raised no new issues, offered no new evidence, and identified no issues which require further Commission consideration. The Commission will therefore deny People's request for reconsideration and vacation of the interim service Order.

The Commission must also decide whether it should reconsider its decision that the third count of Peoples' complaint failed to raise a proper issue.

Peoples alleged that the City had repeatedly and continually violated its service area exclusivity without written consent, Commission Order, or payment of compensation to Peoples. Peoples had requested that the Commission refer this alleged pattern of conduct by the City to the Office of the Attorney General for appropriate legal action, including actions to recover penalties under Minn. Stat. Sec. 216B.61 (1986).

The Commission affirms its earlier decision that Peoples has failed to raise a proper issue. The Commission found in its NOTICE AND ORDER FOR HEARING at page 3:

When the municipal electric utility and the displaced electric utility cannot agree upon the terms for the annexation of the service area, either may file an application with the Commission for a determination of terms. The statutory process found here follows the more general process of bringing suit in court for compensation when one's property is taken by an act of government. The Statutory process has been followed here and has been available to Peoples since the service areas were established.

The Commission believes that in the course of the contested case hearing on compensation, evidence of the City's development practices may be introduced that could lead to the Commission addressing the issue of possible referral to the Attorney General's Office at a later date. However, the Commission will not refer the matter at this time. The Commission finds that it fully analyzed Peoples' position and arguments in making its initial decision and will not reconsider it.

ORDER

1. Peoples Cooperative Power Association's Petition for Reconsideration and Vacation of Order Authorizing the Provision of Electric Service During Proceeding and Petition for Amendment of Notice and Order for Hearing are hereby denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)